

1 KEVIN O'ROURKE
2 SOUTHWELL & O'ROURKE, P.S.
Attorneys at Law
3 960 Paulsen Center
W. 421 Riverside Avenue
Spokane, WA 99201
(509) 624-0159

4 UNITED STATES BANKRUPTCY COURT

5 IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

6 In re:

No.: **10-04018-PCW11**

7 **LAVERNE JOY RETTKOWSKI,**

Chapter 11

8 Debtor.

CONCLUSIONS OF LAW

9 **THIS MATTER** came on for hearing on the filing of the Plan of Reorganization
10 ("Plan") and the final approval of the Disclosure Statement ("Disclosure Statement"), the
11 Court having herein entered its Findings of Fact, based upon the evidence produced, the
12 Court now makes the following:
13

14 **CONCLUSIONS OF LAW**

15 1. The Plan has been accepted in writing by the creditors and equity security
16 holders whose acceptance is required by law;

17 2. The provisions of Chapter 11 have been complied with and the Plan has
18 been proposed in good faith and not by means forbidden by law;

19 3. (i) Each holder of a claim or interest has accepted the Plan or will receive or
20 retain under the Plan, property of a value, as of the effective date of the Plan, that is not
21 less than the amount that such holder would receive or retain if the Debtor were liquidated
22 under Chapter 7 of the Code on such date, or (ii) the Plan does not discriminate unfairly,
23
24
25

Conclusions of Law-1

SOUTHWELL & O'ROURKE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
SUITE 960, PAULSEN CENTER
WEST 421 RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 624-0159

1 and is fair and equitable with respect to each class of claims or interest that are impaired
2 under the Plan and has not accepted the Plan;

3 4. All payments made or promised by the Debtor or by a person issuing
4 securities or acquiring property under the Plan or by an other person for services or for
5 costs and expenses in, or in connection with, the Plan and incident to the case, have been
6 fully disclosed to the Court and are reasonable or, if to be fixed after confirmation of the
7 Plan, will be subject to approval of the Court;

8 5. The identity qualifications and affiliations of the persons who are to be
9 members or managers, if any, of the Debtor after confirmation of the Plan have been fully
10 disclosed, and the appointment of such persons to such offices or the continued
11 appointment of such persons to such offices, or their continuance therein, is equitable and
12 consistent with the interests of the creditors and equity security holders and with public
13 policy;
14

15 6. The identity of any insider that will be employed or retained by the Debtor
16 and their compensation has been fully disclosed;

17 7. (i) Confirmation of the Plan is not likely to be followed by the liquidation or
18 the need for further financial reorganization of the Debtor or (ii) if the Plan is a Plan of
19 liquidation, the Plan sets a time period in which liquidation will be accomplished, and
20 provides for eventuality if the liquidation is not accomplished in that period;
21

22 8. Substantial consummation shall not occur before the sixtieth (60th) day after
23 the Effective Date;

24 9. Debtor's Disclosure Statement is approved; and
25

Conclusions of Law-2

SOUTHWELL & O'ROURKE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
SUITE 960, PAULSEN CENTER
WEST 421 RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 624-0159

1 10. Debtor's Plan shall be confirmed, subject to the following:

2 a. Notwithstanding any provision of the Plan to the contrary, any proposed
3 sale of One Hundred Fifty-Six Acres (Art. I, def. #27), Sixty Acres (Art. I, def. #39),
4 or Eighty Acres (Art. I, def. #20) on terms, rather than a cash sale, while any
5 outstanding balance remains due Classes 6 and 7 (FSA), shall be subject to further
6 Final Order (Art. I, def. #23) of Court After Notice and Hearing (Art. I, def. #3);

7 b. Notwithstanding any provision of the Plan to the contrary, Debtor shall
8 surrender to Classes 6 and 7 (FSA) the FSA Equipment Collateral (Art. I, def.
9 #22), except for the 1977 Ford F600 Truck, 1995 Dodge Pickup, 1998 Morgan
10 Stock Trailer, 2002 Honda ATV, 1 Cow, 2 horses, and the 1995 Arctic Cat 4-
11 wheeler ATV (collectively referred to as "Equipment and Livestock"). Within thirty
12 (30) days of Confirmation, Debtor shall pay Classes 6 and 7 (FSA) the sum of
13 Seven Thousand Nine Hundred Dollars (\$7,900.00) for Equipment and Livestock.
14 Upon payment, Classes 6 and 7 shall execute the necessary documents and
15 writings to release its lien upon and in Equipment and Livestock and shall have no
16 further claim secured by Equipment and Livestock. Equipment and Livestock shall
17 vest in Debtor free of all claims. The entry of the Order confirming the Plan shall
18 terminate the automatic stay of 11 U.S.C. §362(a) as to the Equipment and
19 Livestock surrendered, thereby allowing recovery and disposition of such
20 property by Classes 6 and 7 (FSA) according to applicable non-bankruptcy law;

21 c. Notwithstanding any provision in the plan to the contrary, a final decree
22 shall not be entered and the case shall not be case closed, pursuant to 11
23
24
25

Conclusions of Law-3

SOUTHWELL & O'ROURKE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
SUITE 960, PAULSEN CENTER
WEST 421 RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 624-0159

1 U.S.C. §350, until after all property to be sold or abandoned under the Plan has
2 been sold or abandoned; and

3 d. The treatment of Class 9 (States Resources Corp.), set out in lines 22-
4 24 on p.16 of the Plan, is amended to read as follows:

5 1. Debtor has abandoned and turned over to Class 9 (States
6 Resources Corp.) the State Resource Collateral (Art. 1, def. #40), which
7 has liquidated the same. The balance owing on the Class 9 claim, after
8 applying the proceeds of such liquidation, is \$90,182.50, which shall be
9 referred to as the "SRC Deficiency Claim;"

10 2. The SRC Deficiency Claim shall be paid as a claim of Class
11 12 (Unsecured), subject to the following;

12 3. \$25,000 of the SRC Deficiency Claim shall be deemed to be
13 non-dischargeable, and shall be referred to as the "SRC Non-
14 dischargeable Claim." The remaining \$65,182.50 of the SRC Deficiency
15 Claim shall be fully dischargeable, and shall be referred to as the "SRC
16 Dischargeable Claim;"

17 4. 27.72% of all amounts received by SRC shall be applied to
18 reduce the SRC Non-dischargeable Claim, and 72.28% of all amounts
19 received by SRC shall be applied to reduce the SRC Dischargeable
20 Claim; and

21 5. SRC hereby releases any and all claims against Ashton
22 Klein, for his prepetition purchase of the Challenger Caterpillar Tractor
23
24
25

Conclusions of Law-4


SOUTHWELL & O'ROURKE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
SUITE 960, PAULSEN CENTER
WEST 421 RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 624-0159

(the "Tractor") from the Debtor, and SRC hereby releases any and all
claims, interest, and/or liens against the Tractor.

PRESENTED BY:

SOUTHWELL & O'ROURKE, P.S.

BY: s/ Kevin O'Rourke
KEVIN O'ROURKE, WSBA #28912


Patricia C. Williams
Bankruptcy Judge

Conclusions of Law-5

03/11/2011 18:48:59
SOUTHWELL & O'ROURKE, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
SUITE 960, PAULSEN CENTER
WEST 421 RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 624-0159